IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.275 OF 2007

Madhukar Anant Vajantri .. Petitioner

Versus

Padmakar B. Samant .. Respondent

Mr.Aditya Chitale i/b. S.M.Shettigar for petitioner

Mr.S.R.Page for respondent.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 19th October 2007.

P.C.

. The petitioner has challenged the Award made by the Sole Arbitrator, a copy of which is

annexed as Exh.G to the petition.

2. By the Award dated 24th March 2007, the sole arbitrator has directed the petitioner to pay to respondents an amount of Rs.33,895/- on account of monthly outstandings/dues of maintenance claimed as per the claim statement.

3. It is the case of respondents before the Arbitral Tribunal that they are a Trust which was established for making available to persons from lower middle class and middle class housing accommodation. After prolonged efforts, they procured land and constructed tenements which were allotted. Thereafter, the allottees formed a cooperative housing society after they were put in possession. The petitioner was one such allottee and he was allotted tenement. It is undisputed that he is in possession of tenement and now that a cooperative society has been formed and is functional. However, the dispute

pertains to the period prior to the formation of the society. The Trustees made demand on the allottee/members for payment of monthly sums towards maintenance so that until the property is handed over to the housing society, it is maintained and administered in accordance with proposed Rules and Regulations. Monthly maintenance is basically aimed at collecting amounts which had to be forwarded to local authorities, including electric company. The petitioner had defaulted in payment of certain sums and the period for which he was in default is from July 2003 to March 2006.

4. Since demands were raised and he refused to pay the same. Ultimately, in accordance with the agreement dated 6th November 2002, the matter was referred to the Arbitrator.

5. Parties have filed their statement of claim and defence. Number of documents were

placed before the Arbitral Tribunal. The Tribunal relying upon the contract stipulations and the documents placed before it, accepted the claim of the respondents and directed the petitioner to pay the sums mentioned above with interest.

6. It is this award which is the subject matter of challenge before me.

7. Since the tenement is allotted the petitioner is in possession and a society is formed, I had called upon parties to put an end to the matter amicably. It was brought to my notice that there were twelve persons against whom similar claims were lodged. The petitioner is last in the line. All others have accepted the Award and made the payment. The petitioner deposited with the respondents a sum of Rs.17,800/- without prejudice to his rights and contentions. Mr.Page after taking instructions

makes a statement that this amount would be duly appropriated and adjusted towards the Award amount.

8. The only argument advanced before me by Mr.Chitale, learned Counsel appearing for petitioner is that the Arbitrator failed to notice that the sums as claimed are not in accordance with the terms and conditions of the Agreement. He submits that the details which were supplied did not include the latest position with regard to municipal taxes and electricity bills. The municipal taxes and electricity bills as forwarded and amounts claimed on that basis were inflated. The taxes and electricity charges had indeed gone down. In such circumstances, the demand as made could not have been sustained. The Arbitral Tribunal did not apply its mind to number of documents which were placed before it. It failed to notice that the deposit of Rs.10,000/- ought to have been utilised for

adjustment and appropriation of the said dues and keeping that amount aside, the demand is made which is impermissible. The deposit is utilised by the Trustees for payment to Public body/local authority which is not justified at all.

9. Having perused the petition and the annexures thereto, including the Award, in my view, there is no substance in any of the grievance and contentions. This is not a court of appeal which can re-appreciate and re-appraise the material before the Arbitrator. It is undisputed before me that clause 31 of the Agreement specifically provides for payment of outgoings. The outgoings are also specified. It is not as if the demand is towards something other than what is stipulated in the Agreement. If the bills were forwarded and in the opinion of the petitioner, the municipal taxes have been re-determined at some other rate, it was incumbent upon him to have placed all that

material. That apart, the difference between the municipal assessment and the bills as forwarded by the Municipal Corporation to the respondents appear to be very marginal. It is not something as if the Trustees are calling upon the petitioner to make payment of huge sums which are unsupportable by any documentary proof. The Municipal Bills of consumptions of water electricity and municipal assessment have been forwarded. They have been received by him. His interpretation of the terms and conditions of the agreement has not been accepted. Merely because that has not been accepted, the petitioner cannot allege that the demand was not bonafide. Even his allegations of the malafides on the part of the respondents were not substantiated by him.

10. The Arbitral Tribunal has referred to the entire material and to the relevant provisions of the B.M.C. Act and rendered the subject award. Even the rate of interest is agreed between the

parties under the Agreement. It is not as if the respondents were making some inflated demand with a view to earn some gain or profit. These are expenses which have been incurred by the Trustees on behalf of allottees, which the allottees must make good until they take over administration and management of the building. A just and reasonable demand of this nature could not have been refused by the petitioner allottee, is the conclusion. The award does not suffer from any infirmity or error much less of the nature contemplated by Section 34 of the Arbitration Act.

11. The challenge is, therefore, misconceived. Petition fails and is accordingly dismissed.

(S.C.DHARMADHIKARI, J)